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CIVIL AND POLITICAL RIGHTS

Human rights and arbitrary deprivation of nationality

Report of the Secretary-General

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I. INTRODUCTION

1. In its resolution 1999/28 of 26 April 1999, the Commission on Human Rights reaffirming article 15 of the Universal Declaration of Human Rights, in accordance with which everyone has the right to a nationality and no one shall be arbitrarily deprived of his or her nationality, called upon all States to refrain from taking measures and from enacting legislation that discriminates against persons or groups of persons on grounds of race, colour, gender, religion, or national or ethnic origin by nullifying or impairing the exercise, on an equal footing, of their right to a nationality, especially if this renders a person Stateless, and to repeal such legislation if it already exists.

2. The Commission urged the appropriate mechanisms of the Commission and the pertinent United Nations treaty bodies to continue to collect information on this question from all relevant sources and to take account of such information, together with any recommendations, in their reports. The Commission also requested the Secretary-General to continue to collect information on this question from all relevant sources and to make it available to the Commission on Human Rights for its consideration.

3. On 20 September 1999, notes verbales, memoranda and letters were sent to Governments, the specialized agencies of the United Nations as well as relevant intergovernmental and non-governmental organizations requesting information on this question. As of 30 November 1999, three replies had been received to the notes verbales - from the Governments of Cyprus, Japan and Morocco.

II. INFORMATION RECEIVED FROM GOVERNMENTS

A. Cyprus

[Original: English]
[16 November 1999]

1. Article 14 of the Constitution of the Republic of Cyprus states that "(n)o citizen shall be banished or excluded from the Republic under any circumstances". The Republic of Cyprus Citizenship Law of 1967 makes provision for the acquisition and renunciation and deprivation of citizenship.

2. A person acquires citizenship of Cyprus by birth - if any of his or her parents was a citizen at the time of the birth, by registration - if he or she is married to a citizen of the Republic and the two have lived together for at least two years, or by naturalization - if certain qualifications are satisfied including continuous residence for seven years.

3. A citizen may renounce citizenship by making a formal declaration which must be registered; the registration may be withheld if the reason for the renunciation is to avoid military service or to evade criminal prosecution.

4 The citizen may be deprived of citizenship by a decision of the Council of Ministers in cases where citizenship was first acquired by registration or by naturalization. Section 8 of the Law states that the Council of Ministers may deprive a citizen of citizenship where it was obtained by fraud, false representation or by the concealment of any material fact, if a naturalized person shows himself or herself to be disloyal or disaffected towards the Republic, if the naturalized person had dealings with the enemy in time of war, if a naturalized person was sentenced to a term of imprisonment of not less than 12 months within five years from naturalization, if a naturalized person has been ordinarily resident in a foreign country for a period of seven years and during that period has neither (i) been at any time in the service of the Republic or of an international organization of which the Republic was a "member", or (ii) registered annually in the prescribed manner at a consulate of the Republic an intention to retain citizenship of the Republic.

5 Section 8 (5) of the Law states however that "(t)he Council of Ministers shall not deprive a person of his citizenship under the above section unless it is satisfied that it is not conducive to the public good that that person should continue to be a citizen of the Republic".

6 The Council of Ministers, before depriving any person of Cyprus citizenship, gives notice to him or her and affords the person the opportunity to request an inquiry. If the person requests the inquiry, the Council of Ministers will establish a committee of inquiry consisting of a chairman possessing judicial experience and other members that the Council thinks proper to appoint.

7 There is no provision in the Law allowing the deprivation of the citizenship on grounds of nationality, ethnicity, race, religion or language.

8 Moreover, the Government of Cyprus noted that it has ratified the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights and the International Convention on the Elimination of All Forms of Racial Discrimination.

B. Japan

[Original: English
[12 November 1999]

1. Japan does not have any legislative provision regarding the arbitrary deprivation of nationality.

2 Article 10 of the Japanese Constitution states that the conditions necessary for being a Japanese national shall be determined by law. To this end, the Nationality Law (Law No. 147, 1950) contains provisions governing the loss of nationality. Japanese nationality can be lost in the following cases.

3. A Japanese national shall lose Japanese nationality when he or she acquires a foreign nationality by choice - for example by naturalization in a foreign country in accordance with the laws of the foreign country concerned. The acquisition of foreign nationality by choice is governed by article 11 of the Law.

4. Article 12 of the Law states that a Japanese national who was born in a foreign country and has acquired the foreign nationality by birth shall lose Japanese nationality retroactively as from the time of birth, unless he or she notifies his or her wish to retain the Japanese nationality with the notification of birth.

5. Under article 13 of the Law, if a Japanese national having a foreign nationality expresses his or her wish to renounce Japanese nationality by notifying to the Minister of Justice, he or she shall lose the Japanese nationality at the time of the notification. Freedom to renounce Japanese nationality is guaranteed under article 22 of the Constitution which states that "(f)reedom of all persons to move to a foreign country and to divest themselves of their nationality shall be inviolate". However, freedom of renunciation of Japanese nationality may not result in statelessness: only those Japanese nationals having a foreign nationality are allowed to renounce their Japanese nationality.

6. Article 15 of the Law states that if a Japanese national having a foreign nationality fails to choose Japanese nationality within one month after the day he or she receives the notice to choose another nationality, he or she shall lose the Japanese nationality at the expiration of the one-month time limit.

7. Article 16 of the Law states that in the case where a Japanese national who has made the declaration to choose Japanese nationality but still remains a national of a foreign State, takes a position as a foreign public official by choice, the Minister of Justice may pronounce the loss of the Japanese nationality of the person, if the Minister deems that taking such a position would be incompatible with holding Japanese nationality. In this case, the person in question shall lose Japanese nationality at the date of the announcement of the declaration by the Minister of Justice in the Official Gazette.

8. Article 2 (3) stipulates that a child born in Japan where both parents are unknown or have no nationality, shall be a Japanese national.

C. Morocco

[Original: French]
[29 November 1999]

1. The Government of Morocco reported that the question of nationality was regulated by the Code of 6 September 1958. Where the mother of a child has Moroccan nationality, the child has the right to Moroccan nationality as well. Where the father of a child is Moroccan, the child also has the right to Moroccan nationality if he or she is born in Morocco. Moroccan nationality can also be acquired through naturalization.

2 Loss of nationality is governed by article 19 of the Code Moroccan nationality can be lost in the case of voluntary acquisition of another nationality, or where a national takes up public service of another State including as military service in another State In the case of a national taking up public service of another State, the Government of Morocco will notify the person in question who will then have six months in which to choose whether to lose Moroccan nationality or not Where nationality is lost, the person in question has the right to judicial appeal

3 Articles 22 and 24 of the Code deal with the withdrawal of nationality In particular, nationality can be withdrawn in the case of a lack of loyalty towards Morocco or where the person in question is found guilty of particular crimes A lack of loyalty towards Morocco includes a failure to fulfil military obligations, or the fulfilment for profit of acts prejudicial to the interests of Morocco

4 Criminal acts that lead to the withdrawal of Moroccan nationality include an attempt to assassinate the Sovereign or a member of his family, a crime against the internal or external security of the State or a crime justifying a penalty of more than five years' imprisonment

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Report of the Secretary-General

Addendum

Information submitted by the Government of the United States of America

1. The Congress of the United States is vested with the authority to enact legislation concerning United States nationality, and to set criteria for acquisition or loss of United States citizenship.

2. Qualifying grounds for acquisition of United States citizenship are principally based on birth in the United States, the nationality of an individual's parents and/or lawful residency in the United States. In accordance with the fourteenth amendment to the Constitution of the United States, all persons born within the United States are citizens (except persons such as diplomats accredited to the United States who are not subject to United States jurisdiction). Alternatively, qualified non-citizens may acquire United States citizenship through naturalization in the United States, after which their citizenship is protected.

3. A person may possess or even acquire another nationality and nonetheless retain United States citizenship. The US Department of State has an administrative presumption that United States citizens intend to retain their citizenship when they perform certain statutory expatriating acts such as becoming a citizen of a foreign State, subscribing to routine declarations of allegiance to a foreign State and accepting non-policy level employment with a foreign Government.

4. A person cannot waive citizenship nor relinquish it by unilateral declaration except as provided by law. The United States has, however, recognized the right of expatriation as an inherent right of all people - even where this could result in statelessness. Citizens of the United States can surrender their United States nationality through voluntary performance of a statutorily specified expatriating act with the intention of relinquishing citizenship.

5. Further, United States citizens can be subject to loss of nationality. Section 349 of the Immigration and Nationality Act states that United States citizens are subject to loss of citizenship if they perform certain acts voluntarily and with the intention of relinquishing United States citizenship such as: naturalizing in a foreign State, taking an oath to a foreign State or its political subdivisions, entering or serving as a commissioned or non-commissioned officer in the armed forces of a foreign State or entering or serving in the armed forces of a foreign State engaged in hostilities with the United States, working for a foreign Government if (a) he or she has that foreign nationality, or (b) he or she has made a declaration of allegiance to a foreign State in accepting the position, formally renouncing United States citizenship before a United States consular officer outside the United States, formally renouncing United States citizenship within the United States within a time of war, and committing an act of treason when there is a conviction. In addition, a person who acquires United States citizenship after birth through naturalization in the United States is subject to loss of United States citizenship if naturalization is obtained improperly. The United States recognizes that fraudulently obtained citizenship may be revoked even if the individual is rendered stateless as a result.

6. The United States Government may bring a civil action to revoke a person's naturalization if that person obtained naturalization illegally or by wilful concealment or misrepresentation of facts material to eligibility for naturalization. In this case, that person has a legal right to have the issue resolved in a court of law. Any decision may be subject to appeal and the individual is guaranteed all due process protections.

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Addendum

I. INFORMATION SUBMITTED BY THE GOVERNMENT OF BELARUS

1. In accordance with article 4 of the Law on the Nationality of the Republic of Belarus, a Belarusian national cannot be deprived of nationality nor be deprived of the right to change nationality. A person may cease to be a national of Belarus in the case of repudiation or "loss" of nationality.

2. The Government of the Republic of Belarus stated that there have been no cases of arbitrary deprivation of nationality registered in that country.

II. INFORMATION SUPPLIED BY THE GOVERNMENT OF QATAR

3. The State of Qatar grants its nationality to any child of a Qatari father born either in Qatar or abroad. Qatari nationality may also be conferred on foreigners provided that they satisfy certain conditions.

4. Withdrawal of nationality is not possible on racial, ethnic, religious or gender grounds. However, the Law of Nationality specifies grounds for loss of nationality.

5. Under the Law, persons deprived of Qatari nationality may recover their original nationality, instead of becoming stateless.